THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0017, Cullen Concrete Company, Inc. v. Acadia Insurance Company, the court on August 23, 2005, issued the following order:

The plaintiff, Cullen Concrete Company, Inc. (Cullen), sought a declaratory judgment that it is entitled to defense and indemnity under general liability and commercial automotive insurance policies issued by the defendant, Acadia Insurance Company (Acadia). The parties filed an agreed statement of facts, and the trial court denied the petition. Cullen appeals. We affirm.

Cullen was hired by Neagley & Chase Construction Company (Neagley) to pump concrete for a base slab at a water pollution control facility. Carroll Concrete was hired to supply 85 yards of concrete, which was to be unloaded from several trucks, one at a time, into Cullen's pump truck, and then pumped by Cullen into the base slab. Cullen pumped approximately ten yards of concrete from the first of Carroll Concrete's trucks. After concrete from the second truck was unloaded into Cullen's pump truck, a plug formed inside the pump boom preventing the movement of concrete. The pumping operation was discontinued, and eventually Neagley cancelled the pour. Neagley then washed out some of the poured concrete, and removed the remainder by jackhammering it. Reinforcing rods were damaged in removing the concrete. Neagley sued Cullen for negligence and breach of contract, seeking damages for wasted concrete mix, removal and replacement of the concrete that had been poured, additional expenses incurred in repouring the concrete slab, liquidated damages, and attorney's fees and costs. Acadia refused to defend and indemnify Cullen.

The interpretation of insurance policy language is a question of law for this court to decide. Where the terms of an insurance policy are clear and unambiguous, we accord the language its natural and ordinary meaning. Godbout v. Lloyd's Ins. Syndicates, 150 N.H. 103, 105 (2003).

The general commercial liability policy contains an exclusion for property damage arising out of the ownership, maintenance, use or entrustment to others of any auto owned or operated by the insured. "Use" includes operation and loading or unloading. "Autos" include self-propelled vehicles with permanently attached pumps. The parties agree that Cullen's pump truck is a self-propelled truck with a permanently attached pump. Thus, it is an auto for purposes of this policy. We agree with the superior court that the damages Neagley seeks arose out of the use of the pump truck, and thus the exclusion from coverage applies.

The commercial automotive policy contains an exclusion from coverage for:

> "property damage" resulting from the handling of property: a. Before it is moved from the place where it is accepted by the "insured" for movement

into or onto the covered "auto"; or b. After it is moved from the covered "auto" to the place where it is finally delivered by the "insured."

Cullen argues that the "complete operations doctrine" should apply. This doctrine applies to the construction of a "loading and unloading" clause in insurance policies, which expands the meaning of the "use" of a motor vehicle and enlarges the coverage beyond that of the standard liability policy. See American Motorists Ins. Co. v. Nashua Lumber Co., 103 N.H. 147, 150 (1961). We agree with Acadia that the plain language of the "handling of property" exclusion in this case is narrower than the loading and unloading clause to which the complete operations doctrine applies. We also agree with Acadia that all of the alleged damages in this case resulted from the handling of the ten yards of concrete that had already been delivered to the base slab, i.e., to its place of final delivery. Accordingly, as the superior court ruled, the exclusion from coverage applies.

Finally, we reject Cullen's argument that if there is no coverage under the automotive policy, then there must be coverage under the general liability policy. Neither policy provides that the risks excepted from one policy will be covered under the other policy. The trial court properly considered the language of each policy. We find no error in the result it reached.

Affirmed.

NADEAU, DALIANIS and GALWAY, JJ., concurred.

Eileen Fox,
Clerk